

## REMARKS

The above-identified Office Action was a final rejection of Claims 1, 3-28 and 38-40 of the referenced application. The foregoing amendments to the claims are intended to place the application in condition for allowance. Specifically, Claim 38 was amended. In view of this amendment and the following reasoning for allowance, the applicant hereby respectfully requests further examination and reconsideration of the subject application.

### **1. Interview Summary**

The applicants filed an Applicant Initiated Interview Request Form PTOL-413A along with an agenda on August 4, 2008. A telephonic interview meeting was subsequently held on August 5, 2008 between the undersigned and Examiner G. Gauthier's, during which the Examiner suggested the change to Claim 38 to overcome the 35 USC §101 rejections of the claims.

### **2. Rejection of Claims 38-40 Under 35 USC §101**

Claims 38-40 were rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter. More particularly, it was stated that the disclosed meaning of what the claimed computer readable storage medium may consist of, includes a modulated data signal. The applicant has amended independent Claim 38 to change the phrase "computer-readable storage medium" to "computer-readable **tangible** storage medium", as suggested by the Examiner.

The Examiner points to the specification at Page 9, lines 6-27, in support of the contention that the claimed computer readable storage medium is defined as including a "modulated data signal", which is deemed to be non-statutory subject matter. However, this part of the specification clearly indicates that a modulated data signal is classified as a

computer-readable communication medium, not a storage medium. Specifically, the cited portion of the specification states:

"By way of example, and not limitation, **computer readable media may comprise computer storage media and communication media.**

Computer storage media includes both volatile and nonvolatile, removable and non-removable media implemented in any method or technology for storage of information such as computer readable instructions, data structures, program modules or other data. **Computer storage media includes, but is not limited to, RAM, ROM, EEPROM, flash memory or other memory technology, CD-ROM, digital versatile disks (DVD) or other optical disk storage, magnetic cassettes, magnetic tape, magnetic disk storage or other magnetic storage devices**, or any other medium which can be used to store the desired information and which can be accessed by computer 110. **Communication media typically embodies computer readable instructions, data structures, program modules or other data in a modulated data signal such as a carrier wave or other transport mechanism and includes any information delivery media.** The term "modulated data signal" means a signal that has one or more of its characteristics set or changed in such a manner as to encode information in the signal. By way of example, and not limitation, communication media includes wired media such as a wired network or direct-wired connection, and wireless media such as acoustic, RF, infrared and other wireless media. Combinations of the any of the above should also be included within the scope of computer readable media".

Thus, computer-readable storage media is clearly distinguished from computer-readable communication media in the foregoing description. Further, it is stated that a modulated signal is computer-readable communication media. As such, it is not the claimed computer-readable storage media. **This distinction is further emphasized by changing the "storage medium" to a "tangible storage medium".**

As the rejected claims are directed to computer-readable storage media, which does not include a modulated signal, these claims are patentable subject matter under 35 USC §101. Therefore, it is respectfully requested that the rejection of Claims 38-40 be reconsidered.

### **3. Rejection of Claims 1 and 3-28 Under 35 USC §101**

Claims 1 and 3-28 were rejected under 35 USC §101 as allegedly being directed to non-statutory subject matter. More particularly, it was stated that these claims are a process run by the computer-readable medium described in Claim 38. The applicant respectfully disagrees.

First it is pointed out that there is no connection between Claims 1 and 3-28, and Claim 38. Claims 1 and 3-28 represent a completely separate claim set. In addition, it is the applicant's position that the process recited in Claims 1 and 3-28 is patentable subject matter.

Generically, the preamble of independent Claim 1 reads:

"A computer-implemented process for ..., comprising using a computer to perform the following process actions."

Thus, the applicant is claiming a process implemented on a computer where the actions of the process are performed using the computer. This is statutory subject matter.

As stated in the MPEP (see Section 2106 (IV)(B)(1)(a) at Page 2100-13, Rev. 2, May 2004):

"Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part

of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. **The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program."**

Clearly, in the case of the rejected claims, the actions are being claimed as part of a statutory process—namely a process with actions that are performed using a computer. Accordingly, given that Claims 1 and 3-28 are directed toward statutory subject matter, it is respectfully requested that the rejections be reconsidered.

#### **4. Summary**

The applicant gratefully acknowledges the allowance of Claims 29-37. Additionally, in view of the amendments and arguments set forth above, the applicant respectfully submits that Claims 1, 3-28 and 38-40 are in condition for allowance as they are patentable subject matter. Accordingly, further examination and reconsideration of these claims is respectfully requested and allowance at an early date is courteously solicited.

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